

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Richland/Wilkin Joint Powers Authority, a)
Minnesota-North Dakota Joint Powers)
Authority,)

Plaintiff,)

v.)

Civil Action No. 0:13-cv-02262-
JRT-LIB

United States Army Corps of Engineers; John)
McHugh, Secretary of the US Army Corps of)
Engineers (in his official capacity); Jo-Ellen)
Darcy, Assistant Secretary of the Army for)
Civil Works (in her official capacity); and)
Col. Dan Koprowski, District Commander,)
St. Paul District, US Army Corps of)
Engineers (in his official capacity),)

Defendants.)

and)

Fargo-Moorhead Flood Diversion Board of)
Authority, a Minnesota-North Dakota Joint)
Powers Authority,)

Defendant-Intervenor.)

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT GRANTING
DECLARATORY AND PERMANENT INJUNCTIVE RELIEF BARRING ACTIONS TO
CARRY OUT FARGO-MOORHEAD PROJECT IN DEFIANCE OF MINNESOTA’S
PERMIT DENIAL**

Plaintiff moves pursuant to Rule 65, or 60(b)(5) and (6), 54(b) and 56 to provide the following permanent relief:

Declaratory Judgment

To provide permanent declaratory relief establishing that:

1. The Fargo-Moorhead Diversion project is not exempt from Minnesota public waters permitting under Minnesota Chapter 103G, but is instead expressly subject to that permitting by the terms of the Water Resources Reform and Redevelopment Act of 2014 (WRRDA-2014), specifically section 204 of the Act (now codified at 33 U.S.C. § 2232(b)(2)) and section 7002(2) of the Act.
2. The WRRDA permitting requirement applies to the Diversion Authority and all persons acting in concert with the Diversion Authority, including the United States Army Corps of Engineers and the other named federal defendants. Commencing construction on the project before Minnesota permits are received violates the Act and Minnesota law. In the event that permits are issued, violating the conditions of the permits by the Diversion Authority or the federal defendants violates the Act and Minnesota law.
3. Eliminating the Minnesota permitting requirement is a substantial deviation from the authorized tenets of the project. Compliance with the permitting requirements was a substantial requirement that completed the responsibilities under the National Environmental Policy Act (NEPA). Removing those requirements violates, WRRDA-2014, and Minnesota law.

Injunction

To provide permanent injunctive relief as follows:

4. Diversion Authority and all persons acting in concert with Diversion Authority, including the United States Army Corps of Engineers and the other named federal defendants must

permanently cease all actions designed to carry out the Fargo-Moorhead Diversion Project, so long as the project has not received permits required under State law, including the Minnesota public waters and dam safety permits.

Dated: November 30, 2016

RINKE NOONAN

/s/ Gerald W. Von Korff
Gerald W. Von Korff, #113232
Jonathan D. Wolf, #0392542
Suite 300, US Bank Plaza Building
1015 W. St. Germain St.
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
(320) 656-3500 fax
jvonkorff@rinkenoonan.com
jwolf@rinkenoonan.com

ATTORNEYS FOR PLAINTIFF